

AM3668  
LB 1139  
DSH-04-10

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DSH-04-10

AMENDMENTS TO LB 1139

(Amendments to Final Reading copy)

1                   1. Insert the following new sections:

2                   "Sec. 20. Section 44-1984, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4                   44-1984. (1) No insurer that transacts any line of  
5 business other than title insurance shall be eligible for the  
6 issuance or renewal of a certificate of authority to transact the  
7 business of title insurance in this state nor shall title insurance  
8 be transacted, underwritten, or issued by any insurer transacting  
9 or authorized to transact any other line of business.

10                  (2) (a) Notwithstanding subsection (1) of this section,  
11 ~~and to the extent such coverage is lawful within this state, a~~  
12 ~~title insurer is expressly authorized to~~ a title insurer shall  
13 ~~issue closing or settlement protection to~~ covering a proposed  
14 ~~insured upon request~~ if the title insurer issues a title insurance  
15 commitment or title insurance policy. Such closing or settlement  
16 protection shall conform to the terms of coverage and form of  
17 instrument as required by the director and ~~may~~ shall indemnify a  
18 proposed insured solely against loss of settlement funds only  
19 because of the following acts of a title insurer's named title  
20 insurance agent:

21                   (i) Theft of settlement funds; and

22                   (ii) Failure to comply with written closing instructions  
23 by the proposed insured when agreed to by the title insurance agent

1 relating to title insurance coverage.

2 (b) The director may prescribe or approve a required  
3 charge for providing the coverage.

4 (c) A title insurer shall not provide any other coverage  
5 which purports to indemnify against improper acts or omissions of a  
6 person with regard to escrow, settlement, or closing services.

7 Sec. 21. Section 44-19,116, Revised Statutes Supplement,  
8 2000, is amended to read:

9 44-19,116. (1) (a) A title insurance agent may operate as  
10 an escrow, security, settlement, or closing agent subject to the  
11 requirements of subdivisions (b) through (e) of this subsection.

12 (b) All funds deposited with the title insurance agent in  
13 connection with an escrow, settlement, closing, or security deposit  
14 shall be submitted for collection to or deposited in a separate  
15 fiduciary trust account or accounts in a qualified financial  
16 institution no later than the close of the next business day in  
17 accordance with the following requirements:

18 (i) The funds shall be the property of the person or  
19 persons entitled to them under the provisions of the escrow,  
20 settlement, security deposit, or closing agreement and shall be  
21 segregated for each depository by escrow, settlement, security  
22 deposit, or closing in the records of the title insurance agent in  
23 a manner that permits the funds to be identified on an individual  
24 basis; and

25 (ii) The funds shall be applied only in accordance with  
26 the terms of the individual instructions or agreements under which  
27 the funds were accepted.

AM3668  
LB 1139  
DSH-04-10

AM3668  
LB 1139  
DSH-04-10

1                   (c) Funds held in an escrow account shall be disbursed  
2 only pursuant to a written instruction or agreement specifying how  
3 and to whom such funds may be disbursed.

4                   (d) Funds held in a security deposit account shall be  
5 disbursed only pursuant to a written agreement specifying:

6                   (i) What actions the indemnitor shall take to satisfy his  
7 or her obligation under the agreement;

8                   (ii) The duties of the title insurance agent with respect  
9 to disposition of the funds held, including a requirement to  
10 maintain evidence of the disposition of the title exception before  
11 any balance may be paid over to the depositing party or his or her  
12 designee; and

13                   (iii) Any other provisions the director may require.

14                   (e) (i) Disbursements may be made out of an escrow,  
15 settlement, or closing account only if funds in an amount at least  
16 equal to the disbursement have first been received and if the funds  
17 received are in one of the following forms:

18                   (A) Lawful money of the United States;

19                   (B) Wired funds when unconditionally held by the title  
20 insurance agent;

21                   (C) Cashier's checks, certified checks, bank money  
22 orders, or teller's checks issued by a federally insured financial  
23 institution and unconditionally held by the title insurance agent;  
24 and

25                   (D) United States treasury checks, federal reserve bank  
26 checks, federal home loan bank checks, and State of Nebraska  
27 warrants.

AM3668  
LB 1139  
DSH-04-10

AM3668  
LB 1139  
DSH-04-10

1                   (ii) For purposes of this subdivision, federally insured  
2 financial institution means an institution in which monetary  
3 deposits are insured by the Federal Deposit Insurance Corporation  
4 or National Credit Union Administration.

5                   (2) On and after January 1, 2004, every ~~The~~ title  
6 insurance agent shall have an annual audit made of its escrow,  
7 settlement, closing, and security deposit accounts, conducted by a  
8 certified public accountant on a calendar year basis at its expense  
9 within ninety days after the close of the previous calendar year.  
10 The title insurance agent shall provide a copy of the audit report  
11 to each title insurer which it represents. The director may adopt  
12 and promulgate rules and regulations setting forth the minimum  
13 threshold level at which an audit would be required, the standards  
14 of audit, and the form of audit report required. ~~In lieu of such~~  
15 ~~annual audit,~~ a title insurance agent may provide a notarized  
16 ~~certificate of reconciliation and availability of the title~~  
17 ~~insurance agent's escrow accounts to each title insurer which it~~  
18 ~~represents within ninety days after the close of the previous~~  
19 ~~calendar year on a form prescribed or approved by the director.~~  
20 The director may also require a title insurance agent to provide a  
21 copy of its audit report ~~or certificate of reconciliation and~~  
22 ~~availability~~ to the director. Title insurance agents who are  
23 attorneys and who issue title insurance policies as part of their  
24 legal representation of clients are exempt from the requirements of  
25 this subsection. However, the title insurer may, at its expense,  
26 conduct or cause to be conducted an annual audit of the escrow,  
27 settlement, closing, and security deposit accounts of the attorney.

AM3668  
LB 1139  
DSH-04-10

AM3668  
LB 1139  
DSH-04-10

1 Attorneys who are exclusively in the business of title insurance  
2 are not exempt from the requirements of this subsection.

3 (3) If the title insurance agent is appointed by two or  
4 more title insurers and maintains fiduciary trust accounts in  
5 connection with providing escrow, closing, or settlement services,  
6 the title insurance agent shall allow each title insurer reasonable  
7 access to the accounts and any or all of the supporting account  
8 information in order to ascertain the safety and security of the  
9 funds held by the title insurance agent.

10 (4) Nothing in the Title Insurance Agent Act shall be  
11 deemed to prohibit the recording of documents prior to the time  
12 funds are available for disbursement with respect to a transaction  
13 if all parties consent to the transaction in writing.

14 (5) Nothing in this section is intended to amend, alter,  
15 or supersede other sections of the act or the laws of this state or  
16 the United States regarding an escrow holder's duties and  
17 obligations.

18 (6) The director may prescribe a standard agreement for  
19 escrow, settlement, closing, or security deposit funds.

20 Sec. 55. Sections 20 and 56 of this act become operative  
21 on January 1, 2003. The other sections of this act become  
22 operative on their effective date.

23 Sec. 56. Original section 44-1984, Reissue Revised  
24 Statutes of Nebraska, is repealed."

25 2. On page 1, line 1, after the comma insert "44-1984,";  
26 in line 5 after the second comma insert "44-19,116,"; in line 11  
27 after the first comma insert "title insurers,"; and in line 16

AM3668  
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DSH-04-10

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LB 1139  
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- 1 after the semicolon insert "to provide operative dates;".
- 2                   3. On page 91, line 24, after the second comma insert
- 3 "44-19,116,".
- 4                   4. Renumber the remaining sections and correct internal
- 5 references accordingly.